

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
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Telephone Number:

Refer Reply To:
CC:PSI:B01
PLR-115451-16

Date:
May 27, 2016

X =

A =

B =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year C =

Dear

This letter responds to a letter dated May 9, 2016, submitted on behalf of X, requesting relief under § 1362(f) of the Internal Revenue Code.

Facts

The information submitted states that X was formed under the laws of State on Date 1 and elected to be treated as an S corporation effective Date 2. Prior to the election, X

determined that one of its shareholders, A, was not an eligible S corporation shareholder. A took steps to distribute its interest to B, an eligible shareholder. The parties intended the transfer to be effective prior to Date 2 but the transactions were not finalized until Date 3. On Date 4, Form 2553 was timely filed due to the tax department assuming ownership transfer was perfected. In early Year C, X discovered the error and promptly took remedial action.

X represents that the circumstances resulting in the ineffectiveness of X's S corporation election were inadvertent and not motivated by tax avoidance or retroactive tax planning. X and its shareholders have continued to treat X as an S corporation at all times. X and its shareholders agree to make any adjustments (consistent with the treatment of X as an S corporation) that the Secretary may require.

Law

Section 1361(a)(1) defines an "S corporation" as a small business corporation for which an election under § 1362(a) is in effect for the taxable year.

Section 1361(b)(1)(B) provides that a "small business corporation" means a domestic corporation that is not an ineligible corporation and that does not have as a shareholder a person (other than an estate, a trust described in §1361(c)(2), or an organization described in § 1361(c)(6)) who is not an individual.

Section 1362(d)(2) provides that an election under § 1362(a) shall be terminated whenever (at any time on or after the first day of the first taxable year for which a corporation is an S corporation) such corporation ceases to be a small business corporation. A termination of an S corporation election under § 1362(d)(2) is effective on and after the date of cessation.

Section 1362(f) provides, in part, that if (1) an election under § 1362(a) by any corporation was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in such termination were inadvertent, (3) no later than a reasonable period of time after discovery of the event resulting in the ineffectiveness, steps were taken (A) so that the corporation is a small business corporation, or (B) to acquire the required shareholder consents, and (4) the corporation, and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then, notwithstanding the circumstances resulting in such ineffectiveness, the corporation shall be treated as an S corporation during the period specified by the Secretary.

Conclusion

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election was invalid on Date 2 because it had an ineligible shareholder, A. We also conclude that this termination was inadvertent within the meaning of § 1362(f). Therefore, X will be treated as an S corporation effective Date 2 and thereafter, provided that X's S corporation election was otherwise valid and not otherwise terminated under § 1362(d).

Except for the specific ruling above, we express no opinion concerning the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X was otherwise eligible to be treated as an S corporation.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter is being sent to X's authorized representatives.

Sincerely,

David R. Haglund

David R. Haglund
Branch Chief, Branch 1
Office of the Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes

cc: